



**Minutes of the Multistate Tax Commission Executive Committee Meeting
December 11, 2015
Charleston, South Carolina**

I. Welcome and Introductions

The Chair called the meeting to order at 8:30 a.m. The following persons attended the meeting either in person or *via telephone*.

Name	Affiliation	Name	Affiliation	
Julie Magee	Alabama	Gary Humphrey	Oregon	
Michael Gamble	Alabama	Anita Conner	Pennsylvania	
Joe Garrett	Alabama	Nancy Prosser	Texas	
Deanna Munds-Smith	Arkansas	John L. Valentine	Utah	
Stephen Cordi	District of Columbia	Chris Coffman	Washington	
Richard Jackson	Idaho	Drew Shirk	Washington	
Richard Cram	Kansas	Julie Christensen	Wisconsin	
Wood Miller	Missouri			
Nia Ray	Missouri			
Lee Baerlocher	Montana	Public Attendees		
Kory Hofland	Montana	Karen Boucher	FIST Coalition	
Mike Kadas	Montana	Joe Huddleston	EY LLP	
Gene Walborn	Montana	Todd Lard	Sutherland	
John Frasier	New Hampshire	Jennifer McLoughlin	BBNA	
Donna Whitcomb	New Hampshire	Shirley Sicilian	KPMG	
Dan Armer	New Mexico			
Demesia Padilla, Chair	New Mexico	MTC Staff and Consultants		
Lennie Collins	North Carolina	Ken Beier	Len Lucchi	Gregory Matson
Matt Peyerl	North Dakota	Dan Bucks	Keith Getschel	Jim Rosapepe
Ryan Rauschenberger	North Dakota	Lila Disque	Helen Hecht	Thomas Shimkin
Myles Vosberg	North Dakota			Bill Six
Dee Wald	North Dakota			

The Chair indicated there was a quorum.

II. Public Comment Period

There were no public comments during this portion of the meeting.

III. Approval of the Minutes of the Executive Committee Meeting on May 7, 2015

Julie Magee (Alabama) moved acceptance of the Minutes of the Executive Committee meeting of July 30, 2015. The minutes were approved unanimously.

IV. Report of the Chair

There were no comments from the chair during this portion of the meeting.

V. Report of the Treasurer

A. Financial Report for the 4-month period July 1, 2015 – October 31, 2015

Ryan Rauschenberger presented the financial report for the first four months of the fiscal year, noting variances for this period. Rich Jackson moved approval of the report which was passed by a unanimous vote.

B. Approval of audited financial statements as reported in the independent auditor report for fiscal year July 1, 2014 – June 30, 2015

Ryan Rauschenberger noted the clean report from the auditors, the strong balance sheets, some minor losses on investments, and a loss on fixed assets, which was due to disposal of computers that were not fully depreciated. Rich Jackson moved approval of the audited financial statement which was passed by a unanimous vote.

VI. Report of the Executive Director

Greg Matson referred to his written report and noted the following:

- Zero completions for income tax audits, due to no audits having been completed for all states in the audit (six have been partially completed).
- New Hampshire joined the joint audit program on December 1.
- The Nexus Program is now at 37 member states.
- The Deputy Executive Director position is open, but a selection is expected very soon.
- While Richard Cram has been selected as the Nexus Program Director, a senior staff position for the National Nexus Program remains open.

In response to a question, Greg noted that one income tax auditor position will still be open, even after the replacement of a retiring employee. Greg then introduced the new Events Coordinator, Sherry Tiggett, who expressed her appreciation for being part of the MTC team.

Greg then updated the committee on the Arm's Length Adjustment Service. There are six states interested in joining this program—the same number reported at the annual meeting. He noted that three onsite visits have been held with prospective states and that this topic was discussed at the Southeast Commissioners fall meeting. Joe Garrett noted the need for transfer pricing expertise in the states, but that this has not translated to commitments to join the program. Dan Bucks then noted the dilemma of states not being able to support their audit programs due to a lack of resources to assess transfer pricing studies. In addition, he noted there is some confusion between assessment of taxpayer transfer pricing studies and remedies that states can employ, e.g., add-backs.

Greg then expressed his intention to activate the ALAS Committee, comprised of the six states that have made a commitment to join the program. He noted that the committee can operate with no direct expenses, since meetings can be held via teleconference. In response to questions, Greg stated that ten states are likely needed to fully implement the program. The draft report suggests a minimum of seven states; however, he indicated that support from more than seven states, perhaps nine, should be secured before the program is activated. Positive comments on initiation of the committee were expressed by the

Chair and Julie Magee. In response to questions about how long it would take to get the project underway, Greg noted the experience of the National Nexus Program which took about two years to get underway.

VII. Strategic Planning Report

Julie Magee noted that the Strategic Planning Steering Committee met several times by teleconference since the last in-person meeting, and noted the Nexus Program strategic planning projects and the effort to engage practitioners, which will start in January of 2016. Greg noted that Steve Cordi will be supporting the Outreach Committee.

VIII. Uniformity

Wood Miller reminded the group that there are two co-chairs for the Uniformity Committee—Chris Coffman and Richard Cram’s replacement. Wood noted that the committee had approved the drafts of regulations to address changes to Compact, Article IV (UDITPA) Sections 1 and 17 at the meeting the previous day. Mike Kadas, Montana, asked whether the regulations could be approved by the Executive Committee for public hearing. Greg Matson explained that the regulations were not on the Executive Committee’s agenda and would therefore have to be taken up at a subsequent meeting, but that such a meeting could be scheduled and take place by phone prior to the next regularly scheduled meeting. Wood noted that the Uniformity Committee had heard a presentation by Bruce Fort on federal changes to partnership audit rules and that the MTC had recently given other presentations on partnership issues and that the committee was considering whether it might take up a project in that area.

A. Hearing Officer Report on Sales and Use Tax Nexus (Engaging in Business) Model Statute

Helen Hecht, General Counsel, presented the Hearing Officer’s Report from the hearing held on the Sales and Use Tax Nexus Model Statute. She recapped the written report, noting that no comments had been submitted during the hearing process. She also noted that since the hearing, there had been significant interest in states amending their statutory or regulatory law in order to expand sales tax nexus and challenge the U.S. Supreme Court’s Quill decision. She emphasized that the model statute had not been drafted with a challenge to Quill in mind. Rather, the model was drafted to conform to Supreme Court precedent. She also noted that the hearing officer’s report discussed the kinds of changes to the model that states would have to make if the state wished to challenge Quill. Todd Lard of the Sutherland Law Firm gave public comment expressing concern about the hearing officer’s report and especially the section advising states that the model would have to be altered if the state wished to challenge Quill. Jim Rosapepe asked whether adoption of the model would allow states to expand enforcement of the sales and use tax. Helen responded that it would depend on the state and its current law, and also how the state might interpret the model in certain situations, but that it might. The Executive Committee considered the report and the public comments and voted in favor of a motion by Julie Magee, Alabama, to recommend the model to the Commission for adoption at its annual meeting—thus authorizing the MTC to conduct a Bylaw 7 survey of the states.

B. Model Sales and Use Tax Notice and Reporting Statute—Status of Litigation Report

Helen Hecht explained that this project had been tabled by the Executive Committee pending the outcome of litigation in Colorado challenging a state statute similar to the model as unconstitutional. Because that litigation is still ongoing, there has been no activity on the model.

C. Other Uniformity Matters

There were no other uniformity matters before the Committee.

IX. Committee and Program Reports

A. Audit Committee

Keith Getschel presented the report for the Audit Committee which met in Spokane and again this week. Regarding Audit Program staffing, Keith reported that MTC filled a sales tax position in December, he will be interviewing for an income tax position in January, filling the vacancy of Marie Plesko who retired at the end of January.

B. Litigation Committee

Helen Hecht presented the report for the Litigation Committee, which met in July, with an open committee meeting and an education/training session. The committee meets again with this format in March. She added that the Paull Mines Award this year was made to the very distinguished and deserving Joe Garrett.

C. Nexus Committee

Lennie Collins presented the report for the Nexus Committee, noting that the committee, at its meeting this week, discussed the current policy of not handling disclosures that are under \$500. He recognized Thomas Shimkin for his excellent work as Director of the National Nexus Program and looks forward to working with Richard Cram in this role.

D. Uniformity Committee

There was no additional report, since Uniformity matters had been discussed earlier in the meeting.

E. Training Program

Ken Beier reported on the Training Program, including recent and upcoming classes. Demesia Padilla lauded the value of MTC courses to the states.

X. Federal Issues with State Tax Implications

Jim Rosapepe reported on the current political environment, including a change in leadership in the House of Representatives. Speaker Ryan is respected across factions in the Republican Party and among Democrats, and he bargained for and got an understanding with a wide range of factions within his party would work with him. As a result, Congress passed a 5-year transportation bill, an education bill, and is in the process of passing budget legislation. He added that the Republican leadership in both houses likes getting things done and the appearance of getting things done. Regarding the power of the Speaker relative to committees, he explained that committees are expected to gain power and return to regular order under Speaker Ryan. Regarding the Senate, he noted the Republicans facing elections are very concerned about the identity of the Presidential nominee and have an aversion to doing anything

controversial. Regarding federal tax reform, Mr. Rosapepe said he would be stunned if this happened in 2016 and stunned if it does not happen in 2017.

Len Lucchi reported on the prospects for the Internet Tax Freedom Act pre-emption, which expires on December 11, the Remote Transactions Parity Act, and other legislation—digital goods, mobile workforce and the Business Activity Tax Simplification Act—that have emerged from committees, but not passed either house of Congress.

Julie Magee noted the common assumption that those who supported the marketplace fairness legislation also support the Remote Transactions Parity Act, but that is not the case. In response to this, Mr. Rosapepe said he would be stunned if anything happens with remote transactions legislation in the next year.

XI. Upcoming Meetings and Events

Greg Matson noted the upcoming March 2-4 Winter Committee Meetings in Salt Lake City, the 49th Annual Conference and Meetings, July 25-28, 2016 in Kansas City, Missouri, and the 50th Annual meeting in Louisville, Kentucky.

The meeting went into closed session at 10:25 AM.

----- **CLOSED SESSION** -----

Reports on the following closed sessions are reported separately:

- I. Nexus Committee & National Nexus Program**
- II. Audit Committee & Joint Audit Program**
- III. Items Related to Pending Litigation & Commission Personnel Matters**

XII. Resumption of Public Session and Reports from Closed Session

The open session resumed at 11:30 a.m. There were no reports from the closed sessions.

XIII. Adjournment

The meeting was adjourned at 11:33 a.m.